

# Memorandum



**Date:** October 24, 2006

Agenda Item No. 8(A)(1)(A)

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of the County Manager.

**Subject:** Claims Settlement Agreements (4) with Fisk Electric Company, North Terminal  
Development Program, Project Nos. 737G and 739F

## **RECOMMENDATION**

It is recommended that the Board approve the attached four (4) claim settlement agreements between Miami-Dade County (County) and Fisk Electric Company (Fisk) relating to Fisk's work for North Terminal Development (NTD) Project Nos. 737G and 739F (Delay Impacts as well as Contract Balance and Retainage) at Miami International Airport (MIA).

## **BACKGROUND**

As part of the NTD Program, the County and American Airlines (American) entered into a Lease, Construction and Finance Agreement (LCF) for American to design and construct the NTD and the County to pay the costs thereof as a tenant improvement project. American hired the Turner-Austin Airport Team (TAAT) as its construction manager.

On June 21, 2005, the Board approved the Fourth Amendment to the LCF with American that transferred the responsibility of completing the NTD Program to the County. Concurrently, the Board approved a Claims Administration Agreement with American giving the County authority to defend, settle and/or adjudicate claims against American on the NTD program. As a result of the Amendment, on June 27, 2005, American terminated TAAT's contract effective July 27, 2005.

As construction manager for American, TAAT entered into contracts with Fisk for Projects 737G and 739F. When American terminated TAAT's contract, TAAT, in turn, terminated the Fisk contracts. Subsequently, Fisk filed claims against American and TAAT with the County totaling \$4,811,474.19—\$2,974,321.04 for Project 737G (Claim Nos. 11210w and 11264) and \$1,837,153.15 for Project 739F (Claim Nos. 11209g and 11266).

Pursuant to the Amended Claims Administration Process, the County directed its Claims Consultant, Alpha Corporation, to review the merits of the claims and recommend settlement amounts commensurate with these merits to a team of Aviation Department staff members designated as the Owner's Review Board (ORB). Following this review process, the County entered into extensive negotiations with Fisk to resolve the claims. During this period, the claims were negotiated down to a total of \$3,223,001.70.

The four (4) settlement agreements being presented to the Board for approval are by and between the County and Fisk. The County agrees to pay Fisk \$3,223,001.70 in settlement of Project and Claim Nos. 737G/11210w and 11264 as well as 739F/11209g and 11266 which Fisk has asserted against the County and American. The funding sources for this payment will come from Bond Funds, \$2,681,801.70, and the American Airlines Claims Administration Agreement, \$541,200.00.

In return, Fisk agrees to release the County and American from all claims arising out of the performance of the work for which payment is being made through the Settlements, the Certified Claims, the Work, and Projects 737G and 739F, except to the limited extent that Fisk has reserved certain specified rights that the County and Fisk have agreed to continue to negotiate and mediate, if necessary.

The settlement agreements meet the requirements of Resolution Nos. R-119-06 (the CSBE Resolution) and R-397-06 (the Amended Claims Administration Process), which require the payment of any settlement amount be conditional upon the claimant paying such portion of the pass through claims of CSBE subcontractors at any tier, determined by the County to be due to such CSBE subcontractors. In accordance with the requirements of this Board, Fisk has certified that no CSBE subcontractors performed any portion of the work involved in these Certified Claims.

  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** October 24, 2006

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No. 8(A)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☒ No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(A)(1)(A)

Veto \_\_\_\_\_

10-24-06

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION RELATING TO NORTH TERMINAL  
DEVELOPMENT PROJECT AT MIAMI INTERNATIONAL  
AIRPORT; APPROVING SETTLEMENT AGREEMENTS  
BETWEEN MIAMI-DADE COUNTY, AMERICAN  
AIRLINES, INC., AND FISK ELECTRIC COMPANY IN  
CONNECTION WITH FISK'S WORK ON PROJECTS 739F  
AND 737G; AUTHORIZING COUNTY MANAGER TO  
EXECUTE SAME FOR AND ON BEHALF OF MIAMI-  
DADE COUNTY**

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves the Settlement Agreements among and between Miami-Dade County, American Airlines, Inc., and Fisk Electric Company, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner ,  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman  
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro  
Audrey M. Edmonson  
Sally A. Heyman  
Dorrian D. Rolle  
Katy Sorenson  
Sen. Javier D. Souto

Jose "Pepe" Diaz  
Carlos A. Gimenez  
Barbara J. Jordan  
Natacha Seijas  
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of October, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

RAP

Rafael A. Paz

**AGREEMENT FOR SETTLEMENT, RELEASE AND WAIVER OF CLAIMS BETWEEN  
MIAMI- DADE COUNTY AND FISK ELECTRIC COMPANY  
IN CONNECTION WITH NORTH TERMINAL DEVELOPMENT PROJECT 737G  
MIAMI INTERNATIONAL AIRPORT**

This Agreement (the "Agreement") is made and entered into this 7 day of September 2006 between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and Fisk Electric Company, a Texas corporation.

WHEREAS, the County, as the owner of Miami International Airport, and had entered into a Lease Construction and Financing Agreement with American Airlines, Inc. ("American"), which authorized American to manage the design and construction of certain improvements to the Terminal Building and airside facilities at Miami International Airport, known as North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the NTD Project; and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") whereby the County agreed to make a good faith effort to analyze, review, process and pay claims asserted against American or the County; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with Fisk Electric Company for work to be performed on Project 737G, at Miami International Airport (the "Project") pursuant to the terms and conditions of M737G-A16-1000-S between TAAT and Fisk Electric Company (the "Contract"); and

WHEREAS, disputes have arisen between the County, American Airlines, TAAT and Fisk Electric Company and its subcontractors and suppliers, including disputes relating to **contract balance and retainage**, which disputes are currently being processed under the Claims Administration Agreement; and

WHEREAS, Fisk Electric Company and its subcontractors and suppliers have asserted various demands against the County and American for work performed and materials delivered (the "Work"), which are included within a written claim certified under the County's False Claims Ordinance for **contract balance and retainage** in the amount of **\$1,278,532.04**, Tracking No. **11264** (the "Certified Claim"); and

WHEREAS, the County and Fisk Electric Company are desirous of settling Fisk Electric Company's Certified Claim for \$999,999.00, and in agreeing to this amount, the parties acknowledge that both County and Fisk Electric Company have compromised their respective positions in good faith;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Fisk Electric Company agree as follows:

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1. Within fourteen (14) days from the Effective Date of this Agreement the County shall pay to **Fisk Electric Company** the amount of \$999,999.00 (the "Settlement Payment"). Prior to the County's payment to **Fisk Electric Company** of the Settlement Payment, **Fisk Electric Company** shall either submit evidence acceptable to the County in the form of releases that **Fisk Electric Company** has paid the amounts set forth below to the CSBE subcontractors and suppliers identified below as full accord and satisfaction of all work of such CSBE subcontractors and suppliers involved in the Certified Claim, or, alternatively, obtain conditional releases from all such CSBE subcontractors and suppliers so involved that shall be effective immediately upon their receipt of such payments from **Fisk Electric Company**:

a. NONE

2. **Fisk Electric Company** hereby certifies that the above CSBEs are all the CSBE subcontractors and suppliers who performed any portion of the Work included in the Certified Claim. Each of the CSBE subcontractors identified above are intended third-party beneficiaries of this Agreement who shall have the right to enforce **Fisk Electric Company's** payment obligations to it under this Agreement in addition to the right of the County to enforce any such payment obligations on behalf of a CSBE subcontractor or supplier who consents in writing to the County taking such action against **Fisk Electric Company** on the CSBE subcontractor's or supplier's behalf. The County shall have full rights to audit **Fisk Electric Company's** payment to the CSBE(s) as provided herein. **Fisk Electric Company** shall cooperate fully as to County's audit, including furnishing copies of cancelled checks, receipts or other evidence of payment promptly upon the County's request.

3. **Fisk Electric Company's** receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of **Fisk Electric Company** or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Certified Claim and that portion of the Work performed on the Project for which the Settlement Payment is being paid, including but not limited to the Certified Claim. **Fisk Electric Company** specifically waives any claim for or entitlement to any further compensation (other than the Settlement Payment) for additional work, delay or otherwise arising out of or relating to the Contract, Certified Claim, Work, or Project, except to the limited extent **Fisk Electric Company** is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

4. In consideration of the payment by County to **Fisk Electric Company** of the Settlement Amount and the mutual covenants and obligations in this Agreement, **Fisk Electric Company** hereby releases the County, American Airlines, and TAAT, and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the Released Parties arising out of or relating to the Settlement Payment, Contract, Certified Claim, Work, or Project, except to the limited extent **Fisk Electric Company** is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

5. In consideration of the payment by the County to **Fisk Electric Company** of the Settlement Payment, **Fisk Electric Company** shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County and American Airlines from any and all liability, losses or damages, including without limitation attorney's fees and costs of defense, that were caused in whole or in

part, by any act, omission, or default of **Fisk Electric Company**, its subcontractors, or its material suppliers, which the County and/or American Airlines may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature by TAAT, or any sureties, or any of **Fisk Electric Company's** subcontractors or material suppliers that performed work on the Project, or any other third parties, relating to the Settlement Payment, Contract, Certified Claim, or Work. **Fisk Electric Company** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and/or American Airlines, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Notwithstanding the foregoing, **Fisk Electric Company's** obligation to defend, indemnify or hold harmless the County and/or American Airlines for damages to persons or property caused in whole or in part by any act, omission or default of the County or American Airlines shall be limited to the contract amount of the Contract, as such contract amount may have been amended or adjusted from time to time. Further, this indemnification shall not be construed to include claims of, or damages resulting from, the gross negligence, or willful, wanton or intentional misconduct of the County and/or American Airlines, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of **Fisk Electric Company** or any of **Fisk Electric Company's** contractors, subcontractors, sub-sub contractors, materialmen, or agents of any tier or their respective employees.

To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, as may be amended, this provision shall hereby be interpreted as the parties' intention to be fully bound with an indemnification clause which complies with Chapter 725, Florida Statutes, as may be amended.

6. Subject to the County's reservation of rights expressed below which includes enforcement of **Fisk Electric Company's** and its Surety's obligations under the Consent of Surety to Requisition Payment, an executed copy of which is attached hereto as **Exhibit "A"**, the County releases and waives any claims it has against **Fisk Electric Company** relating to the settlement herein. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from **Fisk Electric Company** and its Surety payments or credits to the extent **Fisk Electric Company** is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Project; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and
- (5) to enforce any and all provisions of this Agreement, specifically including **Fisk Electric Company's** obligation to pay CSBE subcontractors as set forth above.

7. Nothing herein shall imply that **Fisk Electric Company** releases its remaining certified claims, as identified on Exhibit B hereto, up to the certified amounts of those claims except as provided in Paragraph 3 above.



8. **Fisk Electric Company** acknowledges that it has read this Agreement, understands it, and has had the opportunity to consult with its attorney before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. For all purposes in connection with this Agreement, the "Effective Date" of this Agreement shall be the date of execution of this Agreement by the County Manager.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

**MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

BY: \_\_\_\_\_  
County Manager

DATE OF EXECUTION: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Deputy Clerk

**FISK ELECTRIC COMPANY**

BY: James A. Miller  
Vice President

Attest: Greg C. Thomas  
Secretary

SEAL

**APPROVED AS TO FORM & LEGAL SUFFICIENCY:**

**MIAMI-DADE COUNTY ATTORNEY**

By: RAP 9-14-06

Title: \_\_\_\_\_

# EXHIBIT A

BOND #: 81880853

CONTRACT SAP#:

CONSENT OF SURETY  
TO FINAL PAYMENT  
AIA Document G707

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input checked="" type="checkbox"/>
SURETY	<input type="checkbox"/>
OTHER	<input type="checkbox"/>

TO OWNER:

CONTRACT NO:

STATE OF FLORIDA  
COUNTY OF DADE

CONTRACT DATED: 7/27/05

PROJECT: JOB NUMBER 737G  
(Name and address)

CONTRACT FOR:

North Terminal Development Program, Engineering Only, Miami International Airport

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

(Insert name and address of Surety)

Federal Insurance Company, 15 Mountain View Rd., Warren, NJ 07061

SURETY.

on bond of Fisk Electric  
10125 NW 116th Way, Ste 1A, Medley, Florida 33178  
(Insert name and address of Contractor)

CONTRACTOR

hereby approves of the release of payment to settle Claim Tracking No. 11264, in the amount of \$ 999,999.00. This payment shall not relieve the Surety of any of its obligations to

(Insert name and address of Owner)

STATE OF FLORIDA  
COUNTY OF DADE

OWNER.

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: 9/6/06  
(Insert in writing the month followed by the numeric date and year.)

Federal Insurance Company  
(Surety)

(Signature of authorized representative)

Anett Cardinale  
Attorney-In-Fact  
Florida Resident Agent



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

**Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Anett Cardinale, David H. Carr, James W. Dunn, Kimberly A. Tavernier and Denise Taylor of Tampa, Florida**

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 1st day of December, 2004

*Kenneth C. Wendel*

Kenneth C. Wendel, Assistant Secretary

*John P. Smith*

John P. Smith, Vice President

STATE OF NEW JERSEY

ss.

County of Somerset

On this 1st day of December, 2004

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**KAREN A. EDER**  
Notary Public, State of New Jersey  
No. 2231647  
Commission Expires Oct. 28, 2009

*Karen A. Eder*

Notary Public

### CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this

6th day of September, 2006



*Kenneth C. Wendel*

Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY

Telephone (908) 903-3493

Fax (908) 903-3656

e-mail: surety@chubb.com

**FLORIDA DEPARTMENT OF INSURANCE**  
**ANETT ELISABETH CARDINALE**

**License Number E012335**

IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE

General Lines (Prop. & Casu)



**RESIDENT  
LICENSE**

This Licensee must have an active appointment with the insurer or employer for which products or services are being marketed. See reverse for additional requirements.  
The Board of Governors of the Florida Department of Insurance  
Department of Insurance, Tallahassee, Florida 32399

**IMPORTANT PLEASE READ CAREFULLY**

1. Licensee may only transact insurance with an active appointment by an eligible Insurer or employer. If this person is acting as a surplus lines agent, public adjuster, reinsurance intermediary manager/broker or a health care risk manager, he/she should have an appointment recorded in their own name on file with the Department. If you are unsure of this licensee's status, you should contact the Florida Department of Insurance immediately.
2. This license will expire if more than 48 months elapse without an appointment for each class of insurance listed on the front. If such expiration occurs, the individual or firm will be required to re-qualify as a first-time applicant.
3. If this license was obtained by passing a licensure examination offered by the Florida Department of Insurance, the licensee is required to comply with continuing education requirements contained in 626.2615, 626.859, or 648.385 Florida Statutes.
4. THIS LICENSE IS THE PROPERTY OF THE FLORIDA DEPARTMENT OF INSURANCE. PLEASE NOTIFY THE DEPARTMENT IMMEDIATELY IF LOST OR STOLEN.

# EXHIBIT B

**EXHIBIT B:**  
**CERTIFIED CLAIMS IN 739F NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	737G	11112	\$ 1,497,171.00
Fisk Electric	737G	11265	\$ 72,076.00
Fisk Electric	737G	11210a	\$ 1,307,598.00
Fisk Electric	737G	11210aa	\$ 659.00
Fisk Electric	737G	11210ab	\$ 778.00
Fisk Electric	737G	11210ac	\$ 799.00
Fisk Electric	737G	11210ad	\$ 5,792.00
Fisk Electric	737G	11210ae	\$ 1,036.00
Fisk Electric	737G	11210b	\$ 110,228.00
Fisk Electric	737G	11210c	\$ 34,913.00
Fisk Electric	737G	11210d	\$ 98,992.00
Fisk Electric	737G	11210e	\$ 350,987.00
Fisk Electric	737G	11210f	\$ 33,517.00
Fisk Electric	737G	11210g	\$ 54,758.00
Fisk Electric	737G	11210h	\$ 51,859.00
Fisk Electric	737G	11210i	\$ 119,729.00
Fisk Electric	737G	11210j	\$ 79,982.00
Fisk Electric	737G	11210k	\$ 45,800.00
Fisk Electric	737G	11210L	\$ 75,048.00
Fisk Electric	737G	11210m	\$ 377,712.00
Fisk Electric	737G	11210n	\$ 77,393.00
Fisk Electric	737G	11210O	\$ 21,975.00
Fisk Electric	737G	11210p	\$ 9,793.00
Fisk Electric	737G	11210q	\$ 48,515.00
Fisk Electric	737G	11210r	\$ 166,662.00

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**EXHIBIT B:**  
**CERTIFIED CLAIMS IN 739F NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	737G	11210s	\$ 78,474.00
Fisk Electric	737G	11210t	\$ 62,780.00
Fisk Electric	737G	11210u	\$ 753.00
Fisk Electric	737G	11210v	\$ 4,394.00
Fisk Electric	737G	11210x	\$ 7,648.00
Fisk Electric	737G	11210y	\$ 678.00
Fisk Electric	737G	11210z	\$ 16,430.00
Fisk Electric	737G	11321	\$ 174,231.44
Fisk Electric	737G	11322	\$ 88,675.00





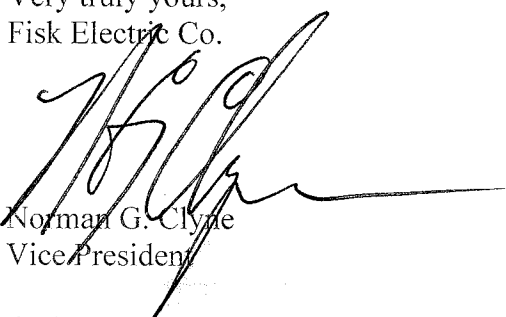
August 22, 2006

Mr. Juan Gonzalez  
Chief of Construction  
Miami Dade Aviation Department  
P.O. Box 025504

RE: NTD Project Identification: 737G  
Claim Tracking No.: 11264

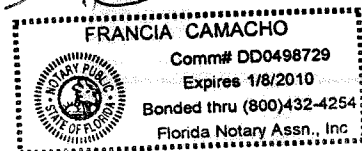
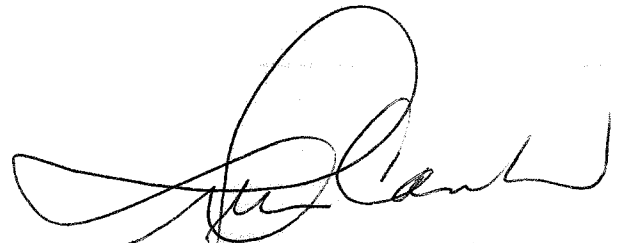
The purpose of this letter is to notify Miami-Dade Aviation Department that no work of or amount for, CSBE subcontractors or suppliers at any level were involved or included within this claim.

Very truly yours,  
Fisk Electric Co.

  
Norman G. Clyne  
Vice President

tim/NGC

Cc: Paul Maggi  
Bill Edgar  
James Muhl  
Greg Thomas  
Jim Thompson- Alpha Corp.



State of Florida  
County of Miami Dade

Personally appeared before me, this 11 day of September 2006, Norman F. Clyne who being duly sworn on oath says that he is Vice President of Fisk Electric Co., and that he hereby acknowledges the execution of the foregoing instrument for and on special instance and request

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**AGREEMENT FOR SETTLEMENT, RELEASE AND WAIVER OF CLAIMS BETWEEN  
MIAMI- DADE COUNTY AND FISK ELECTRIC COMPANY  
IN CONNECTION WITH NORTH TERMINAL DEVELOPMENT PROJECT 737G  
MIAMI INTERNATIONAL AIRPORT**

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WHEREAS, on June 21, 2005, the County and American entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the NTD Project; and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") whereby the County agreed to make a good faith effort to analyze, review, process and pay claims asserted against American or the County; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with Fisk Electric Company for work to be performed on Project 737G, at Miami International Airport (the "Project") pursuant to the terms and conditions of M737G-A16-1000-S between TAAT and Fisk Electric Company (the "Contract"); and

WHEREAS, disputes have arisen between the County, American Airlines, TAAT and Fisk Electric Company and its subcontractors and suppliers, including disputes relating to delay impacts, which disputes are currently being processed under the Claims Administration Agreement; and

WHEREAS, Fisk Electric Company and its subcontractors and suppliers have asserted various demands against the County and American for work performed and materials delivered (the "Work"), which are included within a written claim certified under the County's False Claims Ordinance for delay impacts in the amount of \$1,695,789.00, Tracking No. 11210w (the "Certified Claim"); and

WHEREAS, the County and Fisk Electric Company are desirous of settling Fisk Electric Company's Certified Claim for \$838,800.00, and in agreeing to this amount, the parties acknowledge that both County and Fisk Electric Company have compromised their respective positions in good faith;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Fisk Electric Company agree as follows:

1. Within fourteen (14) days from the Effective Date of this Agreement the County shall pay to **Fisk Electric Company** the amount of \$838,800.00 (the "Settlement Payment"). Prior to the County's payment to **Fisk Electric Company** of the Settlement Payment, **Fisk Electric Company** shall either submit evidence acceptable to the County in the form of releases that **Fisk Electric Company** has paid the amounts set forth below to the CSBE subcontractors and suppliers identified below as full accord and satisfaction of all work of such CSBE subcontractors and suppliers involved in the Certified Claim, or, alternatively, obtain conditional releases from all such CSBE subcontractors and suppliers so involved that shall be effective immediately upon their receipt of such payments from **Fisk Electric Company**:

a. None

2. **Fisk Electric Company** hereby certifies that the above CSBEs are all the CSBE subcontractors and suppliers who performed any portion of the Work included in the Certified Claim. Each of the CSBE subcontractors identified above are intended third-party beneficiaries of this Agreement who shall have the right to enforce **Fisk Electric Company's** payment obligations to it under this Agreement in addition to the right of the County to enforce any such payment obligations on behalf of a CSBE subcontractor or supplier who consents in writing to the County taking such action against **Fisk Electric Company** on the CSBE subcontractor's or supplier's behalf. The County shall have full rights to audit **Fisk Electric Company's** payment to the CSBE(s) as provided herein. **Fisk Electric Company** shall cooperate fully as to County's audit, including furnishing copies of cancelled checks, receipts or other evidence of payment promptly upon the County's request.

3. **Fisk Electric Company's** receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of **Fisk Electric Company** or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Certified Claim and that portion of the Work performed on the Project for which the Settlement Payment is being paid, including but not limited to the Certified Claim. **Fisk Electric Company** specifically waives any claim for or entitlement to any further compensation (other than the Settlement Payment) for additional work, delay or otherwise arising out of or relating to the Contract, Certified Claim, Work, or Project, except to the limited extent **Fisk Electric Company** is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

4. In consideration of the payment by County to **Fisk Electric Company** of the Settlement Amount and the mutual covenants and obligations in this Agreement, **Fisk Electric Company** hereby releases the County, American Airlines, and TAAT, and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the Released Parties arising out of or relating to the Settlement Payment, Contract, Certified Claim, Work, or Project, except to the limited extent **Fisk Electric Company** is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

5. In consideration of the payment by the County to **Fisk Electric Company** of the Settlement Payment, **Fisk Electric Company** shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County and American Airlines from any and all liability, losses or damages, including without limitation attorney's fees and costs of defense, that were caused in whole or in part, by any act, omission, or default of **Fisk Electric Company**, its subcontractors, or its material

suppliers, which the County and/or American Airlines may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature by TAAT, or any sureties, or any of **Fisk Electric Company's** subcontractors or material suppliers that performed work on the Project, or any other third parties, relating to the Settlement Payment, Contract, Certified Claim, or Work. **Fisk Electric Company** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and/or American Airlines, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Notwithstanding the foregoing, **Fisk Electric Company's** obligation to defend, indemnify or hold harmless the County and/or American Airlines for damages to persons or property caused in whole or in part by any act, omission or default of the County or American Airlines shall be limited to the contract amount of the Contract, as such contract amount may have been amended or adjusted from time to time. Further, this indemnification shall not be construed to include claims of, or damages resulting from, the gross negligence, or willful, wanton or intentional misconduct of the County and/or American Airlines, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of **Fisk Electric Company** or any of **Fisk Electric Company's** contractors, subcontractors, sub-sub contractors, materialmen, or agents of any tier or their respective employees.

To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, as may be amended, this provision shall hereby be interpreted as the parties' intention to be fully bound with an indemnification clause which complies with Chapter 725, Florida Statutes, as may be amended.

6. Subject to the County's reservation of rights expressed below which includes enforcement of **Fisk Electric Company's** and its Surety's obligations under the Consent of Surety to Requisition Payment, an executed copy of which is attached hereto as **Exhibit "A"**, the County releases and waives any claims it has against **Fisk Electric Company** relating to the settlement herein. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from **Fisk Electric Company** and its Surety payments or credits to the extent **Fisk Electric Company** is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Project; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and
- (5) to enforce any and all provisions of this Agreement, specifically including **Fisk Electric Company's** obligation to pay CSBE subcontractors as set forth above.

7. Nothing herein shall imply that **Fisk Electric Company** releases its remaining certified claims, as identified on **Exhibit B** hereto, up to the certified amounts of those claims except as provided in Paragraph 3 above.

8. **Fisk Electric Company** acknowledges that it has read this Agreement, understands it, and has had the opportunity to consult with its attorney before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. For all purposes in connection with this Agreement, the "Effective Date" of this Agreement shall be the date of execution of this Agreement by the County Manager.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

**MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

BY: \_\_\_\_\_  
County Manager

DATE OF EXECUTION: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Deputy Clerk

**FISK ELECTRIC COMPANY**

BY:   
Vice President

Attest:   
Secretary

SEAL

**APPROVED AS TO FORM & LEGAL SUFFICIENCY:**

**MIAMI-DADE COUNTY ATTORNEY**

By: RAP 9-14-06

Title: \_\_\_\_\_

# EXHIBIT A

BOND #: 81880853

CONTRACT SAP#:

**CONSENT OF SURETY  
TO FINAL PAYMENT**

*AIA Document G707*

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input checked="" type="checkbox"/>
SURETY	<input checked="" type="checkbox"/>
OTHER	<input type="checkbox"/>

TO OWNER:

CONTRACT NO#

STATE OF FLORIDA  
COUNTY OF DADE

CONTRACT DATED: 7/27/05

PROJECT: JOB NUMBER 7376  
(Name and address)

CONTRACT FOR:

*North Terminal Development Program, Engineering Only, Miami International Airport*

*In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the*

*(insert name and address of Surety)*

*Federal Insurance Company, 15 Mountain View Rd., Warren, NJ 07061*

**SURETY.**

on bond of *Fisk Electric*  
*10125 NW 116th Way, Ste 14, Medley, Florida 33178*  
(insert name and address of Contractor)

**CONTRACTOR**

*hereby approves of the release of payment to settle Claim Tracking No 11210w, in the amount of*  
*\$ 838,800.00. This payment shall not relieve the Surety of any of its obligations to*

*(insert name and address of Owner)*

STATE OF FLORIDA  
COUNTY OF DADE

**OWNER**

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: 9/6/06  
(insert in writing the month followed by the numeric date and year)

*Federal Insurance Company*  
(Surety)

*(Signature of authorized representative)*

Anett Cardinale  
Attorney-In-Fact  
Florida Resident Agent



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

**Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Anett Cardinale, David H. Carr, James W. Dunn, Kimberly A. Tavernier and Denise Taylor of Tampa, Florida**

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 1st day of December, 2004

*Kenneth C. Wendel*

Kenneth C. Wendel, Assistant Secretary

*John P. Smith*

John P. Smith, Vice President

STATE OF NEW JERSEY

County of Somerset

ss.

On this 1st day of December, 2004

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



**KAREN A. EDER**  
Notary Public, State of New Jersey  
No. 2231647  
Commission Expires Oct. 28, 2009

*Karen A. Eder*

Notary Public

### CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 6th day of September, 2006



*Kenneth C. Wendel*

Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY

Telephone (908) 903- 3493

Fax (908) 903- 3656

e-mail: surety@chubb.com

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**FLORIDA DEPARTMENT OF INSURANCE**

**ANETT ELISABETH CARDINALE**

**License Number E012335**

IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE

General Lines (Prop. & Casu)



**RESIDENT  
LICENSE**

This Licensee must have an active appointment with the insurer or employer for which products or services are being marketed. See reverse for additional requirements.  
The Florida Department of Insurance  
www.fldol.com

**IMPORTANT PLEASE READ CAREFULLY**

1. Licensee may only transact insurance with an active appointment by an eligible insurer or employer. If this person is acting as a surplus lines agent, public adjuster, reinsurance intermediary manager/broker or a health care risk manager, he/she should have an appointment recorded in their own name on file with the Department. If you are unsure of this licensee's status, you should contact the Florida Department of Insurance immediately.
2. This license will expire if more than 48 months elapse without an appointment for each class of insurance listed on the front. If such expiration occurs, the individual or firm will be required to re-qualify as a first-time applicant.
3. If this license was obtained by passing a licensure examination offered by the Florida Department of Insurance, the licensee is required to comply with continuing education requirements contained in 626.2815, 626.859, or 648.385 Florida Statutes.
4. THIS LICENSE IS THE PROPERTY OF THE FLORIDA DEPARTMENT OF INSURANCE. PLEASE NOTIFY THE DEPARTMENT IMMEDIATELY IF LOST OR STOLEN.

# **EXHIBIT B**

**EXHIBIT B:**  
**CERTIFIED CLAIMS IN 737G NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	737G	11112	\$ 1,497,171.00
Fisk Electric	737G	11264	\$ 1,278,532.00
Fisk Electric	737G	11265	\$ 72,076.00
Fisk Electric	737G	11210a	\$ 1,307,598.00
Fisk Electric	737G	11210aa	\$ 659.00
Fisk Electric	737G	11210ab	\$ 778.00
Fisk Electric	737G	11210ac	\$ 799.00
Fisk Electric	737G	11210ad	\$ 5,792.00
Fisk Electric	737G	11210ae	\$ 1,036.00
Fisk Electric	737G	11210b	\$ 110,228.00
Fisk Electric	737G	11210c	\$ 34,913.00
Fisk Electric	737G	11210d	\$ 98,992.00
Fisk Electric	737G	11210e	\$ 350,987.00
Fisk Electric	737G	11210f	\$ 33,517.00
Fisk Electric	737G	11210g	\$ 54,758.00
Fisk Electric	737G	11210h	\$ 51,859.00
Fisk Electric	737G	11210i	\$ 119,729.00
Fisk Electric	737G	11210j	\$ 79,982.00
Fisk Electric	737G	11210k	\$ 45,800.00
Fisk Electric	737G	11210L	\$ 75,048.00
Fisk Electric	737G	11210m	\$ 377,712.00
Fisk Electric	737G	11210n	\$ 77,393.00
Fisk Electric	737G	11210O	\$ 21,975.00
Fisk Electric	737G	11210p	\$ 9,793.00
Fisk Electric	737G	11210q	\$ 48,515.00

**EXHIBIT B:  
CERTIFIED CLAIMS IN 737G NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	737G	11210r	\$ 166,662.00
Fisk Electric	737G	11210s	\$ 78,474.00
Fisk Electric	737G	11210t	\$ 62,780.00
Fisk Electric	737G	11210u	\$ 753.00
Fisk Electric	737G	11210v	\$ 4,394.00
Fisk Electric	737G	11210x	\$ 7,648.00
Fisk Electric	737G	11210y	\$ 678.00
Fisk Electric	737G	11210z	\$ 16,430.00
Fisk Electric	737G	11321	\$ 174,231.44
Fisk Electric	737G	11322	\$ 88,675.00



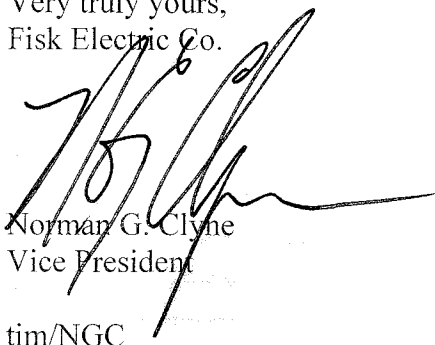
August 31, 2006

Mr. Juan Gonzalez  
Chief of Construction  
Miami Dade Aviation Department  
P.O. Box 025504

RE: NTD Project Identification: 737G  
Claim Tracking No.: 11210W

The purpose of this letter is to notify Miami-Dade Aviation Department that no work of or amount for, CSBE subcontractors or suppliers at any level were involved or included within this claim.

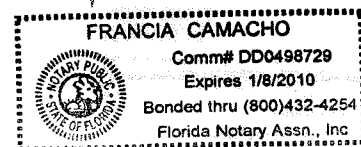
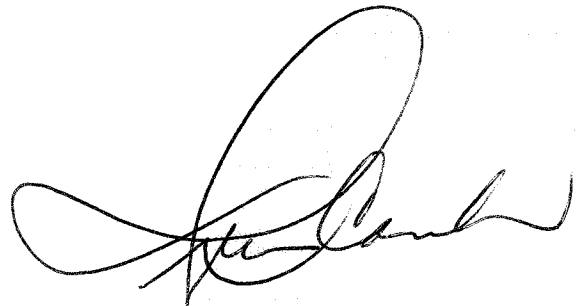
Very truly yours,  
Fisk Electric Co.



Norman G. Clyne  
Vice President

tim/NGC

Cc: Paul Maggi  
Bill Edgar  
James Muhl  
Greg Thomas  
Jim Thompson- Alpha Corp.



State of Florida  
County of Miami Dade

Personally appeared before me, this 11 day of September 2006 Norman G. Clyne who being duly sworn on oath says that he is the Vice President of Fisk Electric Co., and that he hereby acknowledges the execution of the foregoing instrument for and on special instance and request.

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**AGREEMENT FOR SETTLEMENT, RELEASE AND WAIVER OF CLAIMS BETWEEN  
MIAMI- DADE COUNTY AND FISK ELECTRIC COMPANY  
IN CONNECTION WITH NORTH TERMINAL DEVELOPMENT PROJECT 739F  
MIAMI INTERNATIONAL AIRPORT**

This Agreement (the "Agreement") is made and entered into this 7 day of September 2006 between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and Fisk Electric Company, a Rexes corporation.

WHEREAS, the County, as the owner of Miami International Airport, and had entered into a Lease Construction and Financing Agreement with American Airlines, Inc. ("American"), which authorized American to manage the design and construction of certain improvements to the Terminal Building and airside facilities at Miami International Airport, known as North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the NTD Project; and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") whereby the County agreed to make a good faith effort to analyze, review, process and pay claims asserted against American or the County; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with Fisk Electric Company for work to be performed on Project 739F, at Miami International Airport (the "Project") pursuant to the terms and conditions of M739F-A16-1000-S between TAAT and Fisk Electric Company (the "Contract"); and

WHEREAS, disputes have arisen between the County, American Airlines, TAAT and Fisk Electric Company and its subcontractors and suppliers, including disputes relating to contract balance and retainage, which disputes are currently being processed under the Claims Administration Agreement; and

WHEREAS, Fisk Electric Company and its subcontractors and suppliers have asserted various demands against the County and American for work performed and materials delivered (the "Work"), which are included within a written claim certified under the County's False Claims Ordinance for contract balance and retainage in the amount of \$1,029,612.60, Tracking No. 11266 (the "Certified Claim"); and

WHEREAS, the County and Fisk Electric Company are desirous of settling Fisk Electric Company's Certified Claim for \$743,402.70, and in agreeing to this amount, the parties acknowledge that both County and Fisk Electric Company have compromised their respective positions in good faith;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Fisk Electric Company agree as follows:

1. Within fourteen (14) days from the Effective Date of this Agreement the County shall pay to Fisk Electric Company the amount of \$743,402.70 (the "Settlement Payment"). Prior to the County's payment to Fisk Electric Company of the Settlement Payment, Fisk Electric Company shall either submit evidence acceptable to the County in the form of releases that Fisk Electric Company has paid the amounts set forth below to the CSBE subcontractors and suppliers identified below as full accord and satisfaction of all work of such CSBE subcontractors and suppliers involved in the Certified Claim, or, alternatively, obtain conditional releases from all such CSBE subcontractors and suppliers so involved that shall be effective immediately upon their receipt of such payments from Fisk Electric Company:

a. NONE

2. Fisk Electric Company hereby certifies that the above CSBEs are all the CSBE subcontractors and suppliers who performed any portion of the Work included in the Certified Claim. Each of the CSBE subcontractors identified above are intended third-party beneficiaries of this Agreement who shall have the right to enforce Fisk Electric Company's payment obligations to it under this Agreement in addition to the right of the County to enforce any such payment obligations on behalf of a CSBE subcontractor or supplier who consents in writing to the County taking such action against Fisk Electric Company on the CSBE subcontractor's or supplier's behalf. The County shall have full rights to audit Fisk Electric Company's payment to the CSBE(s) as provided herein. Fisk Electric Company shall cooperate fully as to County's audit, including furnishing copies of cancelled checks, receipts or other evidence of payment promptly upon the County's request.

3. Fisk Electric Company's receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of Fisk Electric Company or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Certified Claim and that portion of the Work performed on the Project for which the Settlement Payment is being paid, including but not limited to the Certified Claim. Fisk Electric Company specifically waives any claim for or entitlement to any further compensation (other than the Settlement Payment) for additional work, delay or otherwise arising out of or relating to the Contract, Certified Claim, Work, or Project, except to the limited extent Fisk Electric Company is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

4. In consideration of the payment by County to Fisk Electric Company of the Settlement Amount and the mutual covenants and obligations in this Agreement, Fisk Electric Company hereby releases the County, American Airlines, and TAAT, and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the Released Parties arising out of or relating to the Settlement Payment, Contract, Certified Claim, Work, or Project, except to the limited extent Fisk Electric Company is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

5. In consideration of the payment by the County to Fisk Electric Company of the Settlement Payment, Fisk Electric Company shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County and American Airlines from any and all liability, losses or damages, including without limitation attorney's fees and costs of defense, that were caused in whole or in

part, by any act, omission, or default of **Fisk Electric Company**, its subcontractors, or its material suppliers, which the County and/or American Airlines may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature by TAAT, or any sureties, or any of **Fisk Electric Company's** subcontractors or material suppliers that performed work on the Project, or any other third parties, relating to the Settlement Payment, Contract, Certified Claim, or Work. **Fisk Electric Company** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and/or American Airlines, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Notwithstanding the foregoing, **Fisk Electric Company's** obligation to defend, indemnify or hold harmless the County and/or American Airlines for damages to persons or property caused in whole or in part by any act, omission or default of the County or American Airlines shall be limited to the contract amount of the Contract, as such contract amount may have been amended or adjusted from time to time. Further, this indemnification shall not be construed to include claims of, or damages resulting from, the gross negligence, or willful, wanton or intentional misconduct of the County and/or American Airlines, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of **Fisk Electric Company** or any of **Fisk Electric Company's** contractors, subcontractors, sub-sub contractors, materialmen, or agents of any tier or their respective employees.

To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, as may be amended, this provision shall hereby be interpreted as the parties' intention to be fully bound with an indemnification clause which complies with Chapter 725, Florida Statutes, as may be amended.

6. Subject to the County's reservation of rights expressed below which includes enforcement of **Fisk Electric Company's** and its Surety's obligations under the Consent of Surety to Requisition Payment, an executed copy of which is attached hereto as **Exhibit "A"**, the County releases and waives any claims it has against **Fisk Electric Company** relating to the settlement herein. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from **Fisk Electric Company** and its Surety payments or credits to the extent **Fisk Electric Company** is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Project; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and
- (5) to enforce any and all provisions of this Agreement, specifically including **Fisk Electric Company's** obligation to pay CSBE subcontractors as set forth above.

7. Nothing herein shall imply that **Fisk Electric Company** releases its remaining certified claims, as identified on Exhibit B hereto, up to the certified amounts of those claims except as provided in Paragraph 3 above.



8. **Fisk Electric Company** acknowledges that it has read this Agreement, understands it, and has had the opportunity to consult with its attorney before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. For all purposes in connection with this Agreement, the "Effective Date" of this Agreement shall be the date of execution of this Agreement by the County Manager.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

**MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

BY: \_\_\_\_\_  
County Manager

DATE OF EXECUTION: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Deputy Clerk

**FISK ELECTRIC COMPANY**

BY:   
Vice President

Attest:   
Secretary

SEAL

**APPROVED AS TO FORM & LEGAL SUFFICIENCY:**

MIAMI-DADE COUNTY ATTORNEY

By: RAP 9-14-06

Title: \_\_\_\_\_

# EXHIBIT A

BOND #: 81891891

CONTRACT SAP#:

CONSENT OF SURETY  
TO FINAL PAYMENT

ALA Document 6707

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input checked="" type="checkbox"/>
SURETY	<input checked="" type="checkbox"/>
OTHER	<input type="checkbox"/>

TO OWNER:

CONTRACT NO.:

STATE OF FLORIDA  
COUNTY OF DADE

CONTRACT DATED: 7/27/05

PROJECT: JOB NUMBER 739F  
(Name and address)

CONTRACT FOR:

North Terminal Development Program, Engineering Only, Miami International Airport

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

(Insert name and address of Surety)

Federal Insurance Company, 15 Mountain View Rd., Warren, NJ 07061

SURETY.

on hand of Fisk Electric  
10125 NW 116th Way, Ste 1A, Medley, Florida 33178  
(Insert name and address of Contractor)

CONTRACTOR

hereby approves the release of payment to settle Claim Tracking No. 11266, in the amount of \$ 743,402.70. This payment shall not relieve the Surety of any of its obligations to

(Insert name and address of Owner)

STATE OF FLORIDA  
COUNTY OF DADE

OWNER.

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: 9/6/06  
(Insert in writing the month followed by the numeric date and year)

Federal Insurance Company  
(Surety)

(Signature of authorized representative)

Anett Cardinale  
Attorney-In-Fact  
Florida Resident Agent

35



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

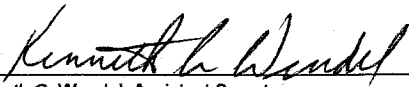
**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

**Know All by These Presents**, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Anett Cardinale, David H. Carr, James W. Dunn, Kimberly A. Tavernier and Denise Taylor of Tampa, Florida**

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 1st day of December, 2004

  
Kenneth C. Wendel, Assistant Secretary

  
John P. Smith, Vice President

STATE OF NEW JERSEY

County of Somerset

ss.


On this 1st day of December, 2004

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



**KAREN A. EDER**  
Notary Public, State of New Jersey  
No. 2231647  
Commission Expires Oct. 28, 2009

  
Notary Public

### CERTIFICATION

Extract from the By- Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

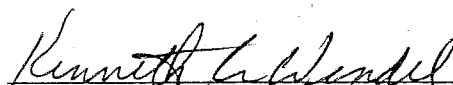
I, Kenneth C. Wendel, Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this

6th day of September, 2006



  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY

Telephone (908) 903- 3493

Fax (908) 903- 3656

e-mail: surety@chubb.com

FLORIDA DEPARTMENT OF INSURANCE  
ANETT ELISABETH CARDINALE

License Number E012335

IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE

General Lines (Prop & Casu)



RESIDENT  
LICENSE

This Licensee must have an active appointment with the insurer or employer for which products or services are being marketed. See reverse for additional requirements.  
The Florida Department of Insurance  
Department of Insurance, Tallahassee, Florida 32301

IMPORTANT PLEASE READ CAREFULLY

1. Licensee may only transact insurance with an active appointment by an eligible insurer or employer. If this person is acting as a surplus lines agent, public adjuster, reinsurance intermediary manager/broker or a health care risk manager, he/she should have an appointment recorded in their own name on file with the Department. If you are unsure of this licensee's status, you should contact the Florida Department of Insurance immediately.
2. This license will expire if more than 48 months elapse without an appointment for each class of insurance listed on the front. If such expiration occurs, the individual or firm will be required to re-qualify as a first-time applicant.
3. If this license was obtained by passing a licensure examination offered by the Florida Department of Insurance, the licensee is required to comply with continuing education requirements contained in 626.2815, 626.859, or 648.385 Florida Statutes.
4. THIS LICENSE IS THE PROPERTY OF THE FLORIDA DEPARTMENT OF INSURANCE. PLEASE NOTIFY THE DEPARTMENT IMMEDIATELY IF LOST OR STOLEN.

# EXHIBIT B

**EXHIBIT B:**  
**CERTIFIED CLAIMS IN 739F NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	739F	11113	\$ 3,184.00
Fisk Electric	739F	11209e	\$ 125,662.00
Fisk Electric	739F	11209f	\$ 99,818.00
Fisk Electric	739F	11209g	\$ 807,540.55
Fisk Electric	739F	11320	\$ 78,049.25

11209g is a combination of 11209a,b,c,d

**++ CLAIM RESOLVED AND APPROVALS IN PROGRESS**



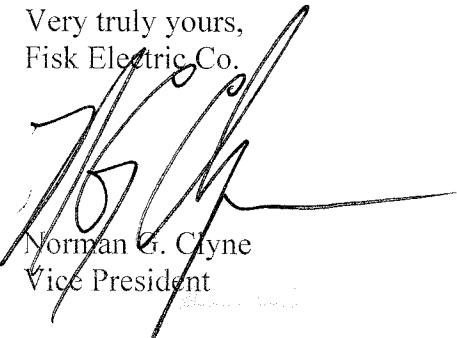
August 22, 2006

Mr. Juan Gonzalez  
Chief of Construction  
Miami Dade Aviation Department  
P.O. Box 025504

RE: NTD Project Identification: 739F  
Claim Tracking No.: 11266

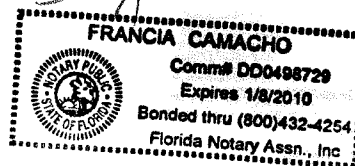
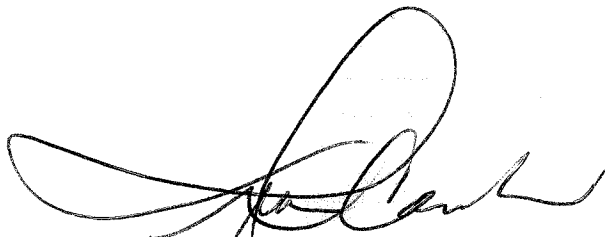
The purpose of this letter is to notify Miami-Dade Aviation Department that no work of or amount for, CSBE subcontractors or suppliers at any level were involved or included within this claim.

Very truly yours,  
Fisk Electric Co.

  
Norman G. Clyne  
Vice President

tim/NGC

Cc: Paul Maggi  
Bill Edgar  
James Muhl  
Greg Thomas  
Jim Thompson- Alpha Corp.



State of Florida  
County of Miami Dade

Personally appeared before me, this 11 day of September 2006, Norman G. Clyne Who being duly sworn on oath says that he is the Vice President of Fisk Electric Co., and that he hereby acknowledges the execution of the foregoing instrument for and on special instance and request.



**AGREEMENT FOR SETTLEMENT, RELEASE AND WAIVER OF CLAIMS  
BETWEEN MIAMI- DADE COUNTY AND FISK ELECTRIC COMPANY  
IN CONNECTION WITH NORTH TERMINAL DEVELOPMENT PROJECT 739F  
MIAMI INTERNATIONAL AIRPORT**

This Agreement (the "Agreement") is made and entered into this 7 day of ~~September~~ September 2006 between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and Fisk Electric Company ("Fisk"), a Texas corporation.

WHEREAS, the County, as the owner of Miami International Airport, and had entered into a Lease Construction and Financing Agreement with American Airlines, Inc. ("American"), which authorized American to manage the design and construction of certain improvements to the Terminal Building and airside facilities at Miami International Airport, known as North Terminal Development Project ("NTD Project"); and

WHEREAS, on June 21, 2005, the County and American entered into the Fourth Amendment to Lease, Construction and Financing Agreement ("Fourth Amendment") which provides for the County to take over and complete the NTD Project; and

WHEREAS, on June 21, 2005, the County and American entered into a Claims Administration Agreement ("Claims Agreement") whereby the County agreed to make a good faith effort to analyze, review, process and pay claims asserted against American or the County; and

WHEREAS, American and Turner Construction Corporation and Austin Commercial, Inc. d/b/a Turner Austin Airport Team ("TAAT") previously entered into a Construction Management At-Risk Agreement and a Construction Management Agreement to manage the construction work for the NTD Project; and

WHEREAS, pursuant to its agreement with American, TAAT contracted with Fisk for work to be performed on Project 739F, at Miami International Airport (the "Project") pursuant to the terms and conditions of M739F-A16-1000-S between TAAT and Fisk (the "Contract"); and

WHEREAS, disputes have arisen between the County, American Airlines, TAAT and Fisk and its subcontractors and suppliers, including disputes relating to **delay impacts**, which disputes are currently being processed under the Claims Administration Agreement; and

WHEREAS, Fisk and its subcontractors and suppliers have asserted various demands against the County and American for work performed and materials delivered (the "Work"), which are included within a written claim certified under the County's False Claims Ordinance for **delay impacts** in the amount of \$807,540.55, Tracking Nos. 11209g (11209a, 11209b, 11209c and 11209d) (the "Certified Claim"); and

WHEREAS, the County and Fisk are desirous of settling Fisk's Certified Claim for \$640,800.00, and in agreeing to this amount, the parties acknowledge that both County and Fisk have compromised their respective positions in good faith;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Fisk agree as follows:

1. Within fourteen (14) days from the Effective Date of this Agreement the County shall pay to Fisk the amount of \$640,800.00 (the "Settlement Payment"). Prior to the County's payment to Fisk of the Settlement Payment, Fisk shall either submit evidence acceptable to the County in the form of releases that Fisk has paid the amounts set forth below to the CSBE subcontractors and suppliers identified below as full accord and satisfaction of all work of such CSBE subcontractors and suppliers involved in the Certified Claim, or, alternatively, obtain conditional releases from all such CSBE subcontractors and suppliers so involved that shall be effective immediately upon their receipt of such payments from Fisk:

a. NONE

2. Fisk hereby certifies that the above CSBEs are all the CSBE subcontractors and suppliers who performed any portion of the Work included in the Certified Claim. Each of the CSBE subcontractors identified above are intended third-party beneficiaries of this Agreement who shall have the right to enforce Fisk's payment obligations to it under this Agreement in addition to the right of the County to enforce any such payment obligations on behalf of a CSBE subcontractor or supplier who consents in writing to the County taking such action against Fisk on the CSBE subcontractor's or supplier's behalf. The County shall have full rights to audit Fisk's payment to the CSBE(s) as provided herein. Fisk shall cooperate fully as to County's audit, including furnishing copies of cancelled checks, receipts or other evidence of payment promptly upon the County's request.

3. Fisk's receipt of the Settlement Payment shall constitute full accord and satisfaction of any and all claims, brought or asserted by or on behalf of Fisk or any of its subcontractors or suppliers (of any tier), or which could have been brought or asserted by same, arising out of or relating to the Certified Claim and that portion of the Work performed on the Project for which the Settlement Payment is being paid, including but not limited to the Certified Claim. Fisk specifically waives any claim for or entitlement to any further compensation (other than the Settlement Payment) for additional work, delay or otherwise arising out of or relating to the Contract, Certified Claim, Work, or Project, except to the limited extent Fisk is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

4. In consideration of the payment by County to Fisk of the Settlement Amount and the mutual covenants and obligations in this Agreement, Fisk hereby releases the County, American Airlines, and TAAT, and their respective officers, directors, parents, employees, agents, instrumentalities, subsidiaries and affiliates, successors and assigns (the "Released Parties") from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the Released Parties arising out of or relating to the Settlement Payment, Contract, Certified Claim, Work, or Project, except to the limited extent Fisk is reserving certain claims as set forth in paragraph no. 7 below and/or Exhibit "B" below.

5. In consideration of the payment by the County to Fisk of the Settlement Payment, Fisk shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County and American Airlines from any and all liability, losses or damages, including without limitation attorney's fees and costs of defense, that were caused in whole or in part, by any act, omission, or default of Fisk, its subcontractors, or its material suppliers, which the County and/or American Airlines may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature by TAAT, or any sureties, or any of Fisk's subcontractors or material suppliers that performed work on the Project, or any other third parties, relating to the Settlement Payment, Contract, Certified Claim, or Work. Fisk shall pay all claims and losses in connection therewith and shall investigate and defend

all claims, suits or actions of any kind or nature in the name of the County and/or American Airlines, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Notwithstanding the foregoing, Fisk's obligation to defend, indemnify or hold harmless the County and/or American Airlines for damages to persons or property caused in whole or in part by any act, omission or default of the County or American Airlines shall be limited to the contract amount of the Contract, as such contract amount may have been amended or adjusted from time to time. Further, this indemnification shall not be construed to include claims of, or damages resulting from, the gross negligence, or willful, wanton or intentional misconduct of the County and/or American Airlines, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of Fisk or any of Fisk's contractors, subcontractors, sub-sub contractors, materialmen, or agents of any tier or their respective employees.

To the extent this indemnification clause does not comply with Chapter 725, Florida Statutes, as may be amended, this provision shall hereby be interpreted as the parties' intention to be fully bound with an indemnification clause which complies with Chapter 725, Florida Statutes, as may be amended.

6. Subject to the County's reservation of rights expressed below which includes enforcement of Fisk's and its Surety's obligations under the Consent of Surety to Requisition Payment, an executed copy of which is attached hereto as **Exhibit "A"**, the County releases and waives any claims it has against Fisk relating to the settlement herein. However, such payment is made without prejudice to the County's rights as follows:

- (1) to obtain from Fisk and its Surety payments or credits to the extent Fisk is found liable for failing to timely and properly complete its work or for liquidated damages pursuant to the Contract Documents for having caused delays to the Project; and
- (2) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents as they may still be applicable; and
- (3) to require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
- (4) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and
- (5) to enforce any and all provisions of this Agreement, specifically including Fisk's obligation to pay CSBE subcontractors as set forth above.

7. Nothing herein shall imply that Fisk releases its remaining certified claims, as identified on **Exhibit B** hereto, up to the certified amounts of those claims except as provided in Paragraph 3 above.

8. Fisk acknowledges that it has read this Agreement, understands it, and has had the opportunity to consult with its attorney before executing this document.

9. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

10. For all purposes in connection with this Agreement, the "Effective Date" of this Agreement shall be the date of execution of this Agreement by the County Manager.

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

**MIAMI-DADE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

BY: \_\_\_\_\_  
County Manager

DATE OF EXECUTION: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Deputy Clerk

**FISK ELECTRIC COMPANY**

BY:                       
Vice President

Attest:                       
Secretary

SEAL

**APPROVED AS TO FORM & LEGAL SUFFICIENCY:**

MIAMI-DADE COUNTY ATTORNEY

By:           RAP 9-14-06          

Title: \_\_\_\_\_

# EXHIBIT A

BOND #: 81891891

CONTRACT SAP#:

CONSENT OF SURETY  
TO FINAL PAYMENT  
AIA Document G707

OWNER ☐  
ARCHITECT ☐  
CONTRACTOR ☒  
SURETY ☒  
OTHER ☐

TO OWNER:

CONTRACT NO.:

STATE OF FLORIDA  
COUNTY OF DADE

CONTRACT DATED: 7/27/05

PROJECT: JOB NUMBER 739F  
(Name and address)

CONTRACT FOR:

North Terminal Development Program, Engineering Only, Miami International Airport

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

(Insert name and address of Surety)

Federal Insurance Company, 15 Mountain View Rd., Warren, NJ 07061

SURETY.

on bond of Fisk Electric  
10125 NW 116th Way, Ste 14, Medley, Florida 33178  
(Insert name and address of Contractor)

CONTRACTOR

hereby approves of the release of payment to settle Claim Tracking No. 11209, in the amount of \$640,800.00. This payment shall not relieve the Surety of any of its obligations to

(Insert name and address of Owner)

STATE OF FLORIDA  
COUNTY OF DADE

OWNER

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: 9/6/06  
(Insert in writing the month followed by the numeric date and year)

Federal Insurance Company  
Surety

(Signature of authorized representative)

Anett Cardinale  
Attorney-In-Fact  
Florida Resident Agent



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

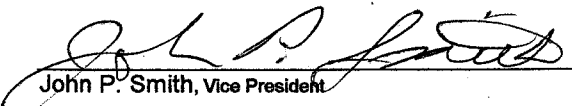
**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

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each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 1st day of December, 2004

  
Kenneth C. Wendel, Assistant Secretary

  
John P. Smith, Vice President

STATE OF NEW JERSEY

County of Somerset

ss.


On this 1st day of December, 2004

before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**KAREN A. EDER**  
Notary Public, State of New Jersey  
No. 2231647  
Commission Expires Oct. 28, 2009

  
Notary Public

### CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

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I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this

6th day of September, 2006



  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY

Telephone (908) 903-3493

Fax (908) 903-3656

e-mail: surety@chubb.com

**FLORIDA DEPARTMENT OF INSURANCE**  
**ANETT ELISABETH CARDINALE**

**License Number E012335**

IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE

General Lines (Prop. & Casu)



**RESIDENT  
LICENSE**

This Licensee must have an active appointment with the insurer or employer for which products or services are being marketed. See reverse for additional requirements.  
The Policy Form is on file with the Department of Insurance.

**IMPORTANT PLEASE READ CAREFULLY**

1. Licensee may only transact insurance with an active appointment by an eligible insurer or employer. If this person is acting as a surplus lines agent, public adjuster, reinsurance intermediary manager/broker or a health care risk manager, he/she should have an appointment recorded in their own name on file with the Department. If you are unsure of this licensee's status, you should contact the Florida Department of Insurance immediately.
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# EXHIBIT B

**EXHIBIT B:**  
**CERTIFIED CLAIMS IN 739F NOT INCLUDED IN OFFER**

Company Name	Project Number	Tracking Number	Amount of Claim
Fisk Electric	739F	11113	\$ 3,184.00
Fisk Electric	739F	11266	\$ 1,029,612.60
Fisk Electric	739F	11209e	\$ 125,662.00
Fisk Electric	739F	11209f	\$ 99,818.00
Fisk Electric	739F	11320	\$ 78,049.25



August 24, 2006

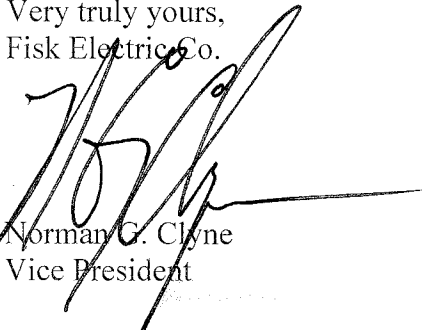
Mr. Juan Gonzalez  
Chief of Construction  
Miami Dade Aviation Department  
P.O. Box 025504

RE: NTD Project Identification: 739F  
Claim Tracking No.: 11209g

**Hand Delivered**

The purpose of this letter is to notify Miami-Dade Aviation Department that no work of or amount for, CSBE subcontractors or suppliers at any level were involved or included within this claim.

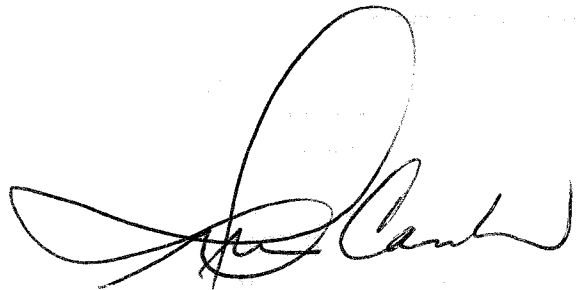
Very truly yours,  
Fisk Electric Co.



Norman G. Clyne  
Vice President

tim/NGC

Cc: Paul Maggi  
Eddy Perrault  
James Muhl  
Greg Thomas  
Jim Thompson- Alpha Corp.



State of Florida  
County of Miami Dade

Personally appeared before me, this 11 day of September 2007, Norman G. Clyne who being duly sworn on oath says that he is the Vice President of Fisk Electric Co., and that he hereby acknowledges the execution of the foregoing instrument for and on special instance and request.

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